



**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MNP/170633

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**PRELIMINARY RECITALS**

Pursuant to a petition filed December 2, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability (DHCAA or Division) in regard to Medical Assistance (MA)/BadgerCare Plus (BCP), a hearing was held on January 20, 2016, by telephone. With the petitioner’s consent, the judge contacted the DHCAA for more information, which was received on January 21, 2015.

The issue for determination is whether the Division correctly denied payment for pyridoxal-5-phosphate (P5P) powder, a bulk chemical supplement typically used in compound drugs.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By written submission of:

[REDACTED] Medicaid System Specialist  
Division of Health Care Access and Accountability  
Madison, WI

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County. He is certified for MA/BCP.

2. The petitioner, age two, suffers from Mabry Syndrome, a rare disorder. He had weekly grand mal seizures which did not respond to the usual anti-seizure medications, such as pyridoxine. Based on the recommendation of a physician expert, the child was started on P5P, and the seizures were reduced to near zero.
3. The petitioner's pharmacy submitted payment claims to MA for P5P, and some number of claims were rejected (number and dates not identified in this record). The Division's basis for denial was that MA-covered compounds must contain at least one drug that is MA-covered. None of the ingredients in the compound that included the P5P are MA-covered.
4. The Division advised that the petitioner may wish to participate in an MA sub-program, HealthCheck. After a HealthCheck screening visit with a physician, the petitioner's pharmacy could submit a successful prior authorization request for P5P. Children screened through HealthCheck can receive a wider array of services than they can through "regular" MA alone.
5. As of the date of hearing, there was no documentation that the petitioner had undergone a HealthCheck screening visit. He was seen by a physician for a visit on February 24, 2015, but that physician did not bill the visit to MA with the specific, required HealthCheck Screen procedure codes. Thus, that visit did not count as a HealthCheck screening.

### DISCUSSION

The petitioner desires to have the MA program pay for P5P. State code offers the following guidance regarding what MA will pay for:

#### **DHS 107.10 Drugs.**

**(1) COVERED SERVICES.** Drugs and drug products covered by MA include legend and non-legend drugs and supplies listed in the Wisconsin medicaid drug index which are prescribed by a physician licensed under s. 448.04, Stats., by a dentist licensed under s. 447.05, Stats., ...

**(3) OTHER LIMITATIONS.** ...

**(h)** To be included as a covered service, a non-legend drug shall be used in the treatment of a diagnosable medical condition and be a rational part of an accepted medical treatment plan. The following general categories of non-legend drugs are covered:

1. Antacids;
2. Analgesics;
3. Insulins;
4. Contraceptives;
5. Cough preparations;
6. Ophthalmic lubricants; and
7. Iron supplements for pregnant women.

**8.** Non-legend drugs not within one of the categories described under subds. 1. to 7. that previously had legend drug status and that the department has determined to be cost effective in treating the condition for which the drugs are prescribed.

...

**(4) NON-COVERED SERVICES.** The department may create a list of drugs or drug categories to be excluded from coverage, known as the medicaid negative drug list. ... In addition, the following are not covered services:

...

***(k) Drugs not listed in the medicaid index, including over-the-counter drugs not included in sub. (3) (h) and legend drugs;***

...

[emphasis added]

Wis. Admin. Code § DHS 107.10(1)-(4).

For a prescription/legend drug, the first inquiry is whether the drug is listed as covered in the Medicaid index. This judge viewed the Division's online MA pharmacy policy handbook at the ForwardHealth portal:

<https://www.forwardhealth.wi.gov/WIPortal/Tab/42/icscontent/provider/medicaid/pharmacy/resources.htm#page#> (viewed February 2016). At that website, there is a "drug search tool." When "pyridoxal-5-phosphate" is entered, the index tool says, "no covered drugs found for the program." This persuades me that P5P is not a covered prescription drug in the Wisconsin Medicaid index. (In contrast, the unsatisfactory drug pyridoxine does appear in the index as a covered drug). State code gives the Department the right to exclude drugs from coverage through its selections into the Medicaid index, so there is no recourse that I can offer the petitioner here.

Post-hearing, this Judge emailed DHCAA regarding the process for the petitioner to participate in an MA sub-program, HealthCheck. HealthCheck is Wisconsin's version of the federally authorized Early Periodic Screening Diagnosis and Treatment program. The Division's response was that the child must undergo a HealthCheck screening visit with a physician, and that the physician must bill MA for that visit using the specific HealthCheck screening procedure codes. *See, ForwardHealth Online Handbook, Topic #22.* After that visit, the pharmacy can submit a prior authorization request for P5P as a "HealthCheck Other Service". The pharmacy will probably have to submit extra documentation from the physician to support the use of P5P. If all of this occurs, and the petitioner's request for P5P is denied through HealthCheck, the petitioner may again appeal through this office.

The detailed communication from the Division, summarized above, is as follows:

A review of ██████'s records does show Medicaid paid for an outpatient visit on 2/24/15. However, **at no time has a provider billed any of these visits as a HealthCheck visit using the specific HealthCheck Screen procedure codes.**

The drug would be covered under HealthCheck Other Services (HCOS) provisions. ... One of the requirements to qualify for HCOS is to have had a HealthCheck screening in the last 12 months (rolling).

ForwardHealth has identified a range of CPT codes that represent preventive medicine services as the "HealthCheck screening code set." These are CPT 99381- 99385 and CPT 99391 – 99395, which are defined as "initial comprehensive preventive medicine [by age ranges]" and "periodic comprehensive preventive medicine [by age ranges]," respectively. **Again, none of these procedure codes has been billed to Medicaid for this member.** However, problem-focused physician visits have been billed.

To meet the HealthCheck screening requirement, the member could schedule a HealthCheck visit; however, services cannot be covered under HCOS in advance of the HealthCheck screening, or the member's physician can submit one of the following forms to document that a comprehensive screening has taken place:

<https://www.dhs.wisconsin.gov/forms/f0/f01068i.pdf>

<https://www.dhs.wisconsin.gov/forms/f0/f01068j.pdf>

Assuming that the member has a HealthCheck screening that can be documented, the pharmacy submits the PA request using the PA/RF and the PA/DGA. The pharmacy will need to work with the member’s physician to obtain the documentation of medical necessity for the member, specifically, peer-reviewed clinical literature that supports the use of the drug for the intended use.

**CONCLUSIONS OF LAW**

1. The Division correctly denied payment requests to “regular” MA for P5P for the petitioner.
2. Because the petitioner has not yet undergone a physician screening billed as a HealthCheck screening, no decision has as yet been made as to whether HealthCheck would be willing to pay for his P5P.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 2nd day of February, 2016

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 2, 2016.

Division of Health Care Access and Accountability